

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY
PRODUCTS LIABILITY LITIGATION

MDL No. 3047

Case Nos.: 4:22-md-03047-YGR-PHK

**JOINT LETTER BRIEF
REGARDING BELLWETHER
SCHOOL DISTRICT PLAINTIFFS'
OBJECTIONS TO DEFENDANTS'
REQUESTS FOR PRODUCTION
OF DOCUMENTS (Set One)**

Judge: Hon. Yvonne Gonzalez Rogers
Magistrate Judge: Hon. Peter H. Kang

This Document Relates to:

Baltimore County Board of Education v. Meta, et al., Case No. 24-cv-01561
Board of Education Harford County v. Meta, et al., Case No. 23-cv-03065
Board of Education of Jordan School District v. Meta, et al., Case No. 24-cv-01377
Breathitt County Board of Education v. Meta, et al., Case No. 23-cv-01804
Charleston County School District v. Meta, et al., Case No. 23-cv-04659
Dekalb County School District v. Meta, et al., Case No. 23-cv-05733
Irvington Public Schools v. Meta, et al., Case No. 23-cv-01467
Saint Charles Parish Public Schools v. Meta, et al., Case No. 24-cv-01098
School District of the Chathams v. Meta, et al., Case No. 23-cv-01466
Spartanburg 6 School District v. Meta, et al., Case No. 24-cv-00106
The School Board of Hillsborough County, Florida v. Meta, et al., Case No. 24-cv-01573
Tucson Unified School District v. Meta, et al., Case No. 24-cv-01382

Dear Judge Kang:

Pursuant to the Court's Standing Order for Discovery in Civil Cases, the School District Plaintiffs and Defendants respectfully submit this letter brief regarding Plaintiffs' objections to Defendants' Requests for Production of Documents to the School Districts (Set One).

Pursuant to the Discovery Standing Order and Civil Local Rule 37-1, the Parties attest that

they met and conferred by video conference, email, and correspondence on numerous occasions before filing this brief. On September 6, 2024, and again on September 17, 2024, lead trial counsel for the Parties involved in the dispute attended final conferrals. Because all lead counsel are not located in the geographic region of the Northern District of California or otherwise located within 100 miles of each other, they met via videoconference. Lead trial counsel have concluded that no agreement or negotiated resolution can be reached.

Attached are the following appendices:

- Appendix A – undisputed RFPs that implicate disputed term “Online Media & Communications Services.”
- Appendix B – chart of disputed RFPs and definition in their original and operative form as proposed by Defendants.

Dated: September 25, 2024

Respectfully submitted,

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Defendants’ Position: Defendants and the School District Bellwether Plaintiffs (“Plaintiffs”) are at an impasse with respect to Plaintiffs’ refusal to search for or produce documents regarding: (1) the impact of non-defendant social media and communications services on Plaintiffs as a result of the disputed definition of “Online Media & Communications Services”; (2) arrests, criminal or disciplinary actions, or investigations of students and certain school employees for specified types of misconduct (RFPs 27, 28); and (3) teacher movement among schools (RFP 31). (*See* Appendix B.) The documents Defendants seek are highly relevant to causation—i.e., whether Defendants’ platforms (as opposed to other factors) caused Plaintiffs’ alleged harms—and the nature, scope and extent of Plaintiffs’ alleged damages.

Definition of “Online Media & Communications Services.” The RFPs in Appendix A seek documents related to “Online Media and Communications Services,” including their uses, harms, costs and benefits to the Plaintiffs. The Parties fundamentally disagree on the proper definition and scope of the term: Defendants defined it to include communications services beyond Defendants’ platforms, but Plaintiffs seek to limit the term to Defendants’ platforms alone. Plaintiffs’ own allegations make clear that Defendants’ definition is the right one; after all, Plaintiffs allege that social media *generally*—not just Defendants’ platforms—is contributing to purported harms to students and, by extension, the districts themselves. (*See* Compl. ¶ 22 (“[c]ompulsive social media use and addiction are negatively affecting student behavior”); *id.* ¶ 24 (“School districts nationwide have made substantial expenditures to combat the drain on learning caused by students’ social media compulsive use and addiction.”).) The information sought through Defendants’ definition will speak directly to the alleged cause of Plaintiffs’ claimed harm. *See Hukman v. Sw. Airlines Co.*, 2019 WL 566451, at *3 (S.D. Cal. Feb. 12, 2019) (“defendants should have access to evidence that the plaintiff[s’] [injuries were] caused by something else”).¹

If the term is limited to Defendants’ platforms, it would not capture documents discussing alleged harms from other platforms. Plaintiffs may want to limit the scope of these cases to Defendants, but Defendants are entitled to discover information about other platforms that could be potential causes of Plaintiffs’ alleged harms. Those other platforms are also widely used and have similar design features to certain Defendants’ platforms; many of the non-party platforms allow for anonymous account creation, use algorithms to maximize engagement, and include direct messaging features. Indeed, one of the platforms included in Defendants’ definition reportedly ceased operations during the Relevant Time Period due to bullying and harassment. (It has since been restored.) Moreover, many Plaintiffs maintain active accounts on one or more non-party platforms included in Defendants’ definition and use such platforms to engage with their students and communities. Although Plaintiffs have chosen to sue only the owners and operators of a few communications services, that does not dictate the scope of information relevant to their claims.

RFPs 27-28 seek documents sufficient to show: (1) any criminal or disciplinary action or investigation of certain school district employees; and (2) arrests or law enforcement investigations of students or certain School District employees, to the extent such actions or

¹ Plaintiffs’ argument about TikTok’s objections to producing communications between TikTok and certain non-parties is a red herring. Plaintiffs put social media in general at issue, including the potential effects of other platforms on their students’ mental health and wellbeing. Defendants are entitled to Plaintiffs’ documents and communications about those other platforms. TikTok’s (or any other Defendant’s) communications with non-parties has no bearing on this issue.

investigations arise from misconduct involving “Student(s), parent(s), other School District employee(s), or that occurred on School District property or at any schools therein.”

Plaintiffs refuse to search for and produce any responsive documents regarding criminal or disciplinary actions and related investigations of certain school district employees, even though the instances and prevalence of school district employees’ misconduct sought by amended RFP 27 are directly relevant to Defendants’ theories of alternative causation. Such misconduct, and the school districts’ responses to it, speak not only to Plaintiffs’ hiring and employment practices, and the competence of their employees, but also to the physical and mental wellbeing of students and the adequacy of Plaintiffs’ efforts to protect that wellbeing. To the extent Plaintiffs are failing to protect students and the learning environment from their own employees, Defendants are entitled to test whether Plaintiffs are to blame for the very injuries and damages they allege in this litigation. Again, Plaintiffs assert that the cases are about only “Defendants’ [alleged] role in the youth mental health crisis,” but Defendants are entitled to defend the claims by pointing to other potential causes, including the schools and teachers themselves.

Although Plaintiffs agreed to produce reports concerning arrests of students only relating to *on-campus* activity, Plaintiffs’ offer does not include reports of arrests or investigations that occur off-campus but nonetheless exist in Plaintiffs’ files. Given the broad allegations that Defendants’ platforms have caused mental illness and academic decline among Plaintiffs’ schools, students, and the broader community, incidents of purported “off-campus” misconduct involving students and school district personnel may point to other explanations for Plaintiffs’ claimed harms. There are many kinds of in-person misconduct that may occur off-campus and have nothing to do with Defendants’ platforms, but that nevertheless affect schools and the mental health of students. If Plaintiffs have documents relating to off-campus arrests or investigations in their possession, custody, or control, it is likely because those incidents affected Plaintiffs or their students. Such information is relevant to this litigation and should be produced.

Plaintiffs argue that the requests are improper because they seek “documents about specific incidents involving particular individuals” intended to embarrass the implicated individuals. But Defendants do not want to harass or embarrass—they want relevant information to adequately defend against Plaintiffs’ sweeping claims. To that end, Defendants already limited RFPs 27 and 28 to *documents sufficient to show* investigations, arrests, and disciplinary actions regarding specific types of misconduct by limited categories of individuals, which may not necessarily disclose any individual’s identity. Moreover, the information sought is no more sensitive than other information being produced by all parties in this litigation subject to protective order. Plaintiffs notably have not expressed similar concerns over on-campus arrests, despite no logical distinction between the two.

RFP 31 seeks documents regarding teacher turnover, retention and mobility. Plaintiffs agreed to produce certain responsive documents regarding these topics, but the parties disagree about the scope of discovery related to teacher mobility. While the parties agree that teacher mobility refers to “teachers transitioning from one school to another within the School District,” Plaintiffs seek to narrow the request to transitions “due to job dissatisfaction concerning student behavior or lack of available student support resources,” while Defendants seek information on transitions due to job dissatisfaction generally. Plaintiffs have not articulated any logical reason why Defendants’ request should be limited to teacher transitions related to student behavior. Transitions arising from job dissatisfaction or inadequate resources more broadly would shine a light on potential alternative

causes for Plaintiffs' alleged harms. For example, significant teacher mobility could be indicative of systemic issues in the school district that implicate Plaintiffs' own conduct or policies, and undermine Plaintiffs' theory that Defendants bear responsibility for their complained-of harms.

Plaintiffs' refusal to produce documents on these topics at a school level is similarly flawed.² Defendants are entitled to investigate *which* schools in a given district are hiring, retaining or losing teachers. For example, if a school consistently loses teachers due to poor conditions, it would be important to understand whether those teachers moved to another school within the district or left the district altogether. This information would only be captured by documents related to teacher turnover, retention, and mobility within each school in a district, and *not* in documents regarding the district generally (as Plaintiffs proposed). This information is particularly relevant to the larger school districts, which contain hundreds of individual schools and service dozens of cities, and will help Defendants understand the extent to which the harms or damages Plaintiffs allege are concentrated in certain schools. It would also be relevant if Plaintiffs' alleged harms flow disproportionately from schools experiencing the highest turnover.

School Districts' Position: Defendants' requests violate the basic principles of proportionality, relevance, and burden. Rather than seeking important information that would help resolve the issues here, Defendants broadly seek information about an array of irrelevant technology, documents concerning specific students and staff that could only be sought to annoy and embarrass, and specific information about stand-alone incidents that, to the extent they are even relevant, are covered by the aggregate information that Plaintiffs have agreed to produce and that is publicly available. Moreover, Plaintiffs have proposed meaningful compromises, which Defendants have unreasonably rejected. Defendants' requests should be denied in their entirety.

Defendants' Definition of "Online Media & Communications Services." This litigation is about Facebook, Instagram, TikTok, Snap and YouTube. Yet, Defendants seek to improperly broaden the scope through a definition of "Online Media & Communications Services" that is unquestionably overly broad, unduly burdensome, and irrelevant because it purports to include several applications or products that do not reasonably relate to the issues in this action. The overbreadth of this definition is clearly shown by the nearly 30 examples of applications or products that Defendants identified as being encompassed by the definition.

As a reasonable compromise, Plaintiffs have proposed limiting "Online Media & Communications Services" to "social media"—defined as "websites or applications designed for social networking where users create online communities to share information"—and limiting the scope to "social media platforms at issue in this litigation." Defendants insist that Plaintiffs' proposal is too narrow, yet this limitation is precisely the limitation that the TikTok Defendants insisted on when it sought to narrow the scope of Plaintiffs' Request to Produce ("RFP") Nos. 211-212 related to industry communications. Defendants' assertion that Plaintiffs' general reference to "social media" in the Master Complaint opens the door to any online platform, regardless of whether it is a social media platform, that could possibly cause harm to users is non-sensical and clearly overbroad. While Defendants demand that the definition include multiple irrelevant platforms (*i.e.*, BeReal, Discord, GroupMe, iMessage, Kik, Omegle, Pinterest, Reddit, Slack, Telegram, Twitch, Tumblr,

² Contrary to Plaintiffs' assertion, Defendants consistently requested documents on these topics "*within each school in a School District*," including in correspondence on August 9, 2024.

WhatsApp, X (formerly known as Twitter), and YikYak), Plaintiffs do not allege that *any* of these online platforms have contributed to the alleged harms, nor does the Master Complaint make *any* reference to Discord, GroupMe, iMessage, Kik, Omegle, Pinterest, Reddit, Slack, Telegram, Twitch, Tumblr or YikYak. The only mention of BeReal, WhatsApp, and Twitter are in hyperlinks to websites that do not discuss harm or potential harm that these platforms pose to users. Defendants arbitrarily selected these irrelevant online platforms and have failed to articulate any reasonable justification for why they have any bearing on the issues in this litigation.

Tellingly, Defendants have not provided any specific examples in support of their position. Defendants claim that some of the non-party platforms have similar features to *certain* Defendants' platforms, but have not identified which non-party platforms are implicated. Defendants also claim that one of the non-party platforms ceased operation during the Relevant Time Period. Plaintiffs cannot evaluate the legitimacy of this claim because Defendants have not disclosed which non-party platform is being discussed. Yet, by Defendants' admission, that unidentified platform is not relevant to this litigation because it was not operating during the Relevant Time Period. Defendants cannot conduct a fishing expedition based on the speculative belief that Plaintiffs' students *may* use a non-party platform. *See Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1072 (9th Cir. 2004) ("District courts need not condone the use of discovery to engage in 'fishing expedition[s].'"). Plaintiffs' proposal is narrowly tailored to the disputed issues in this case by limiting the definition to the social media platforms at issue in this litigation and should be ordered by the Court.

RPD Nos. 27-28. Defendants' request for documents showing "any criminal or disciplinary action or investigation" (RPD No. 27) or "any arrests or law enforcement investigations" (RPD 28) into any non-party student, teacher, coach, or administrator that interacts directly with students and parents, involving student(s), parent(s), other School District employee(s), or that occurred on School District property or at any school(s), is not only similarly overbroad, disproportionate, and irrelevant, but also clearly intended to harass and embarrass. Defendants make no effort to even attempt to tie any of the alleged misconduct to the facts of this case, instead seeking documents about any arrests, investigation, or disciplinary action, regardless of the nature of underlying conduct, the ultimate resolution of the investigation or arrest, or whether it impacted Plaintiffs.

As such, this request has no bearing on resolving the issues at stake—namely Defendants' role in the youth mental health crisis gripping our nation—and falls outside of the discovery permissible under Rule 26(b)(1). To the extent Defendants seek to argue that crime generally is an alternative cause, there are far less burdensome and invasive ways to obtain this information, such as through aggregate crime reporting statistics. Indeed, Plaintiffs have already agreed to produce aggregate reporting concerning student on-campus drug, alcohol, or nicotine use in violation of District policy, students' crime rate, students' physical altercations and/or violence between students, gun violence impacting students, sexual violence impacting students, student suspensions and/or expulsions, and bullying incidents (RFPs 10, 29-30, 32-34, 72). But this is not what Defendants seek. Instead, Defendants ask that Plaintiffs produce documents *about specific incidents* involving *particular individuals* who are non-parties—regardless of what conduct was involved or if the claims were substantiated—without any showing of how or why any of those stand-alone incidents relate to the School Districts' staffing and expenditures addressing student mental health. To the extent Defendants truly seek information about Plaintiffs' hiring practices, that discovery should come through other sources—such as policies—rather than an invasive production of individual records and personnel files. Defendants' suggestion that Plaintiffs knowingly hired employees who

Plaintiffs thought would commit crimes or violence has no basis in fact and is, frankly, offensive. This request is clearly intended to embarrass students, staff, and schools regardless of whether misconduct allegations are true or not. This is not proper grounds for discovery. *See* Fed. R. Civ. P. 26(c) (recognizing that Court may issue protective order where discovery against “annoyance, embarrassment, oppression, or undue burden or expense”).

Moreover, the information sought is so overbroad that it would inevitably lead to irrelevant, unnecessary, and burdensome mini-trials over a host of issues, such as whether the alleged conduct actually occurred, who was involved, and the extent to which the alleged conduct had any mental health implications. Courts have rightfully rejected discovery on such grounds. *See, e.g., ClearOne, Inc. v. RSM US LLP*, 2017 WL 6496447, at *2 (D. Utah Dec. 18, 2017) (“[T]he material sought invites speculation about whether RSM has committed other bad acts related to other clients...[and] the discovery will further confuse the issues in this case because the court will be forced to conduct mini trials about whether other related incidents involving RSM’s alleged lack of independence had merit.”). This case is about the enormous impact Defendants’ platforms have had on School Districts’ operations and Defendants’ request for information about individual events untethered to the facts at issue in this case should be denied.

RPD No. 31. RPD No. 31 originally sought “Documents which address, mention, analyze, track, or otherwise reference teacher turnover (including voluntary and involuntary), teacher retention, and teacher mobility during the Relevant Time Period.” During the Parties September 6 meet and confer, the parties appeared to agree to the production of “documents ... show[ing] teacher turnover and discussion of reasons for teacher turnover within the district generally,” which would encompass teacher retention, but disagreed on the relevance of teacher “mobility.” The Parties subsequently agreed to the inclusion of teacher “mobility,” but disagree on the definition. In addition, Defendants have reverted from their September 6 position to insist on the production of documents concerning these issues at individual schools, as opposed to within the District generally such that it may have had an impact on more than a single school site.

Plaintiffs propose the following definition for “mobility:” “Teacher mobility refers to teachers transitioning from one school to another within the School District due to job dissatisfaction concerning student behavior or lack of available student support resources.” Defendants disagree, insisting that teachers moving from one school to another within the district is relevant regardless of the reason for the move. But Defendants’ definition unnecessarily broadens the request to include irrelevant documents, such as a teacher transferring schools for personal reasons, like moving to a new home, wanting a larger classroom, or preferring a different grade level. Defendants speculate that such moves could impact student well-being. But Plaintiffs agree to produce documents concerning student well-being in response to multiple other Requests. The same holds true for teacher turnover and retention on a school site level—if such incidents impacted student well-being or were otherwise discussed by Plaintiffs’ custodians, Defendants will get the documents. Plaintiffs’ proposal to produce documents concerning teacher turnover, retention, and mobility related to relevant student behavioral issues or lack of support resources is reasonable. Defendants’ insistence on documents concerning teacher mobility for irrelevant reasons and school-by-school information on turnover is overbroad and irrelevant. And their speculative concern about missing documents discussing an impact on student well-being is misplaced considering Plaintiffs’ agreement to produce documents concerning well-being in response to other RPDs.

ATTESTATION

I, Laura Bernescu, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1 that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: September 25, 2024

/s/ *Laura Bernescu*
Laura Bernescu